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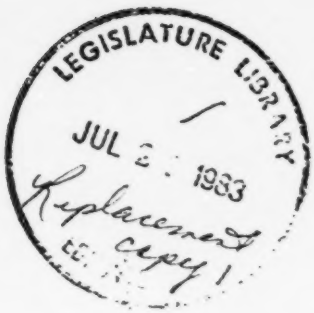

PRIVATE MEMBERS' PUBLIC BILLS: ALBERTA

ALBERTA LEGISLATIVE INTERNSHIP PROGRAM, 1982-83

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Before getting into this paper, I would like to explain my reasons for writing on this topic. So, if the reader will kindly bear with me . . .

My first assignment as a Legislative Intern was with Mr. Tom Sindlinger, the Independent MLA for Calgary-Buffalo. It was while working for Mr. Sindlinger that I first came into contact with private Members' public bills. Mr. Sindlinger asked me to draft a bill for him to introduce during the next session. This task, I must say, seemed ominous. However, I soon learned that most of the drafting was to be left to the Parliamentary Council, Mr. Clegg, and that my job really only involved translating Mr. Sindlinger's desires into a rough proposal for Mr. Clegg's perusal. While Mr. Sindlinger failed to get re-elected in the election that intervened between the drafting of the bill and the next session, I soon learned that very few private Members' public bills (or private Members' bills) are passed in any given session, or indeed any given Legislature. Why then, do Members bother going to all the work of having bills drafted and introduced in the Legislature when the chance of having one's ideas translated into law are extremely poor to say the least? That, then, is the focus of this paper.

Private Members' public bills are an integral part of the British system of government which Canada inherited. The first Canadian Parliament accepted the rules and procedures of the British House almost in total.(1) Under these rules, individual members were allowed great latitude in their participation in the law making process. Thus private Members' bills took up a considerable amount of time and indeed many of them were passed.(2) This condition carried

on until political parties gained more prominence thus making party discipline an important factor in Parliament.(3) Another, and no less important, factor in the decreasing importance of private Members' bills was the increase in the power of the executive arm of government. The result of this in tandem with the increasing importance of parties was to make the passage of government sponsored legislation the primary order of business in Parliament.(4) This situation has continued on to this day until private Members' bills have seemed to become almost irrelevant to the lawmaking process.

At this point I would like to break and explain what private Members' bills are and the rules regulating their use.

Private Members' public bills are, as the name implies, public bills. This is in distinction from private bills. Section 700 of Beauchesne's makes the following clarification:

> A public bill relates to matters of public policy while a private bill relates to matters of a particular interest or benefit to a person or persons. A bill containing provisions which are essentially a feature of a private bill cannot be introduced as a public bill. . . . A bill designed to exempt one person from the application of the law is a private bill and not a public bill.(5)

Public bills may be broken into two categories: those introduced by individual members (thus private Members' public bills or private Members' bills), and those introduced by the government. Bills introduced by the government are normally refered to as public bills. Only members of Executive Council are rightly 'government members', and thus only they may introduce legislation on behalf of the government.(6)

Anyone may properly introduce a bill. Section 718 of Beachesne's clearly states that, ". . . it is the undoubted right of any Member, whether he be a government Member or a private Member of the House, at least to put in the form of a bill his views and opinions before the House."(7) There are,

however, certain rules that must be followed in the introduction of a private Members' bill. A Member must give one day's clear notice to the Clerk's office of his or her intention to introduce a bill. As a result of printing schedules, a Member must actually give the Clerk's office two day's notice so that his or her intention will be printed on the order paper one day prior to introduction.

Before notice of a Private Members' Bill may be put on the order paper, the bill must undergo the scrutiny of the Speaker and the Clerk of the Assembly. The Speaker decides if the proposed bill infringes upon the prerogative of the Crown (ie. is the bill a money bill) or if the bill should be dealt with as a private bill.(8) The Speaker must rule out of order any bill failing the above two criteria at the time of introduction or at any time before second reading. It should be emphasized that the Speaker may only rule a bill out of order on procedural grounds. When leave to introduce a bill is granted, the bill is considered to have been read a first time. At this stage there is no debate, no amendments are allowed, and the Member introducing the bill is only allowed to give a brief description of the intended purpose of the bill.

Private Members' bills come up for second reading debate between 4:30 pm and 5:30 pm on Thursdays. If a bill is not voted upon it drops to the bottom of the order paper. Before any private Members' bill may proceed to Committee of the Whole, all other private Members' bills on the order paper must have advanced through the second reading stage. The result of this is that no bills ever get to committee unless they are taken up under government business.

There are a few unique features in the way private Members' bills are handled in Alberta. The first is that due to a temporary Standing Order,

second reading debate only takes place Thursday afternoons instead of both Tuesday and Thursday afternoons. This, of course means that there is only half as much time to debate private Members' bills.

Another feature unique to Alberta is the interpretation of the money bill rule. As explained earlier, a private Members' bill may not deal with the spending of money. However there is some latitude with which this rule may be applied. A case in point is that of Saskatchewan where for some time the money rule was interpreted so strictly as to make the cost of printing a private Members' bill enough to classify the bill as a money bill.(9)

Alberta has been much more lenient. The general rule is that a bill will not be considered a money bill unless it deals specifically with spending. Thus the spending of money may be incidental to the purpose of the bill.(10) To illustrate the extent to which this is the case, consider Bill 203, the Alberta Development Fund Act, introduced by Grant Notley during the first session of the 20th Legislature. This bill was a bill to "restructure the heritage trust fund . . . "(11) The bill was not considered a money bill because it did not directly appropriate funds, but rather dealt with methods of handling funds; the bill would have required the enactment of an appropriation bill before it could become functional. This loose interpretation of the money rule is a boon to private Members of the Alberta Legislature in that it substantially broadens the range of interests that may be introduced in a private Members' bill.

There are a number of criticisms of private Members' bills, the most common of which is, as mentioned earlier, that private Members' bills have become irrelevant. This general criticism is based on a number of more specific perceived deficiencies.

One of the most common criticisms is that the time given for debating

private Members' bills is too limited.(12) Another criticism is that private Members' bills are poorly drafted and thus could not be enacted even if they were passed. In addition to this the complaint has been made that there is poor communication between the people drafting private Members' bills and the departments targeted by the bills as to the difficulties imposed by certain proposals.(13) In a more humorous vein, Gordon Aiken sees private Members' bills as being something like an ""Opportunities for MP's" program, keeping them busy at thinking up ideas and making speeches."(14) This complaint is no doubt related to the criticism that few private members ever see their ideas in legislation because most private Members' bills are talked out.(15) This complaint has been put most eloquently by Frank Howard:

> Persistently the approach has been . . . to talk out private members' proposals -- not to consider them on their merits, not to meet them head on, not to argue about a good or a bad proposition, but to talk out the propositions advanced by private members.(16)

Finally, the complaint has been made, at least of the federal government, that Cabinet is unreceptive to ideas put forward in private Members' bills.(17)

The major problems confronting private Members' bills as pointed out in the criticisms, then, are basically four. They are that there is little time for discussion, bills are poorly drafted, bills are more often than not talked out, and that Cabinet is unreceptive. Yet despite these problems MPs at least, continue to introduce private Members' bills in ever increasing numbers.(18)

To see if the foregoing criticisms are valid in Alberta, and to see if Alberta trends are similar to federal trends, I have paritally replicated a 1974 study done by R.V. Stewart Hyson. In this study I have used much of Hyson's methodology, and tested for many of the same things.

The period which is tested in this paper is the 19th Legislature which held sessions between May 4, 1979 and May 4, 1982. The reason for choosing this period is that it was recent and thus should give an indication of Members' current approach to private Members' bills. In all cases, data were gleaned from the appropriate issues of Hansard .

The first thing to be looked at is the number of government and private Members' bills proposed and enacted during the 19th Legislature.

TABLE 1

Total Government and Private Members' Bills Proposed/Enacted

	proposed			enacted		
	Gov't	Priv.	Total	Gov't	Priv.	Total
Session 1	78	36	114	74	0	74
Session 2	97	39	136	92	0	92
Session 3	100	52	152	98	0	98
Session 4	42	29	71	41	0	41
19th Legislature	317	156	473	305	0	305
Average/Session	79.2	39	118.2	76.2	0	76.2

Table 1 shows that there was an increase in the number of private Members' bills introduced every session except for the last one. The drop in the fourth session is most likely due to the shortness of that session; it only had one sitting. If we double the raw figures to account for the missing sitting we find that the number for the fourth session was an increase as well. This would seem to indicated the opposite of Mr. Gordon Aiken's assertion that Members soon stop proposing legislation when they discover that it always comes to naught.(19) More important, though, is the fact that of

all the public bills introduced, slightly more than one third were introduced by private Members. This figure differs from Hyson's figures which showed that private Members' bills accounted for anywhere from 47% (in the 24th Parliament) to 75% (in the 28th Parliament) of public bills introduced.(20) Much of the reason for the low number of private Members' bills in Alberta might be attributable to the large amount of government public bills introduced. These averaged 79.2 bills per session as compared to Hyson's sessional average for the length of his study of 52.6 bills per session.(21) Another factor may be the small number of Members in opposition during the time period of this study. However, Table 2 will show that this is not the case. Equally interesting is the fact that mone of the private Members' bills were enacted while all but twelve of the government bills were.

Finally, then, Table 1 has shown that despite the fact that private Members' bills were not passed, there appeared to be a growing interest by private Members' in introducing them. This is the same as the federal trend.

Table 2 shows the origin of private Members' bills. From this table we can see that each party introduced about the same number of bills as each other party, on average, over the entire length of the Legislature. It is interesting to note, however, that there was a significant variance from session to session. While the Social Credit Members and the New Democratic Members introduced seventeen and thirteen bills respectively during the first session, the Progressive Conservative Members introduced only six. The number of private Members' bills introduced by private Members on the government side increased drastically by the end of the third session however, and if the figures for the fourth session are doubled to account for one less sitting, we find that the Progressive Conservative private Members introduced far more than their counterparts in the other caucuses. Thus, this table too reflects

the seemingly growing interest on the part of private members to introduce legislation. While it would appear that the growing interest is largely on the part of the Progressive Conservative private Members, this can be attributed to the large number of Progressive Conservative private Members, as Table 3 will show.

TABLE 2

Origin of Private Members' Bills

(expressed as a % of all PMBs)

	PC	SC	NDP	N
Session 1	16.6 (6)	47.2 (17)	36.1 (13)	36
Session 2	28.2 (11)	41.0 (16)	30.7 (12)	39
Session 3	36.5 (19)	19.2 (10)	42.3 (22)	52
Session 4	41.3 (12)	24.1 (7)	31.0 (9)	29
19th Legislature	30.7 (48)	32.0 (50)	35.8 (56)	156
Average/session	(12)	(12.5)	(14)	39

Despite the increase in the number of bills submitted by the Progressive Conservative Members, on the whole, they only introduced 30.7% of the private Members' bills introduced by the three groups. This is contrary to Hyson's study in which he found that members of the governing party tended to introduce more bills that members of opposition parties.(22)

Table 3 shows the ratio of private Members' bills to sponsoring Members' party's representation in the Legislature.

TABLE 3

Ratio of Private Members' Bills to Partys' Representation

	PC	SC	NDP
Session 1	.13	4.2	13
Session 2	.25	4.0	12
Session 3	.44	2.5	22
Session 4	.27	2.3	9
Average/session	.27	3.2	14

*Ratios were calculated by dividing the number of private Members' bills introduced by each party's private Members, by the number of each party's private Members. This is the same as the method used by Hyson.(23) Ratios were adjusted for changes in membership during the 3rd and 4th sessions.

The results of this test are similar to Hyson's insofar as the governing party is concerned. Hyson found the ratios to be in the range of .10 to .64 in his study which spanned the 24th to the 28 Parliaments of the House of Commons.(24) The ratios for the two parties in opposition in Alberta were far higher than the opposition in Hyson's study, however. This is due in large part to the small size of the opposition in Alberta, and no doubt due to the effect with which they carry out their opposition roles.

The especially high ratio of bills to Members for the NDP may also be attributable to a number of other factors. First and foremost, it should be

noted that throughout the 19th Legislature there was only one New Democratic member. This aside, a 1976 study of the Canadian Parliament suggested that this could be due to an interventionist political philosophy on the part of the NDP.(25) In contrast, Lawrence Leduc and Walter White found in a 1974 study of opposition in Ontario that "the NDP members were inclined to think in terms of a competitive opposition function and hence tended to give high rankings to activities which emphasized the government -- opposition dicotomy . . ."(26) Leduc and White went on to say that the activities favoured included setting out a record of policy which could be used in an election campaign. Introduction of bills on many different topics would certainly fullfill this function.

TABLE 4

Outcomes of Private Members' Bills

(as a % of total PMBs)

	Session				
	1	2	3	4	19th Leg.
1st reading only	75.0(27)	69.2(27)	73.0(38)	79.3(23)	73.7(115)
talked out (2nd read)	25.0(9)	30.7(12)	26.9(14)	20.6(6)	26.2(41)
enacted	none				
N	(36)	(39)	(52)	(29)	(156)

Table 4 shows the outcomes of private Members' bills for the four sessions of the 19th Legislature. From the information presented we can see

that throughout the Legislature only about one quarter of the bills introduced made it to second reaading debate, and of these, all were talked out and none enacted.

It should be noted that the percentage of private Members' bills debated at second reading remained reasonably static throughout the 19th Legislature, although it did drop off somewhat during the last session.

Table 5 contains the same information as Table 4, but breaks the bills down into groups according to party membership of the sponsor.

TABLE 5

Outcomes of Private Members' Bills by Sponsor's Affiliation

(as a % of category)

	PC	SC	NDP	Total	N
Session 1					
1st reading only	14.8(4)	48.1(13)	37.0(10)	99.9	(27)
Talked out(2nd read)	22.2(2)	44.4(4)	33.3(3)	99.9	(9)
Session 2					
1st reading only	18.5(5)	44.4(12)	37.0(10)	99.9	(27)
Talked out(2nd read)	50.0(6)	33.3(4)	16.6(2)	99.9	(12)
Session 3					
1st reading only	23.6(9)	18.4(7)	55.2(21)	97.2	(38)
Talked out(2nd read)	71.4(10)	21.4(3)	7.1(1)	99.9	(14)
(one other bill was introduced by T.Sindlinger (Ind) Calgary-Buffalo)					
Session 4					
1st reading only	34.7(8)	21.7(5)	39.1(9)	95.5	(23)
Talked out(2nd read)	66.6(4)	33.3(2)	0(0)	99.9	(6)
(one other bill was introduced by G.Kessler (WCC) High River)					
19th Legislature					
1st reading only	22.6(26)	32.1(37)	43.4(50)	98.1	(115)
Talked out(2nd read)	53.6(22)	31.7(13)	14.6(6)	99.6	(41)
Average/Session					
1st reading only	(6.5)	(9.25)	(12.5)	--	(28.75)
Talked out(2nd read)	(5.5)	(3.25)	(1.5)	--	(10.25)

Percentages may not total 100% because of rounding.

This table is especially instructive in that, aside from the first session, Progressive Conservative Members' have consistently had more of their bills reach second reading debate. As this is a function of when the bill was introduced, and members are more-or-less in control of when their bills are introduced, one might, in conjuction with the information from Table 3, deduce from this that NDP bills are introduced less with an eye to debate than with the intent of establishing clear policy.

This brief study has shown a number of things. The first is that there is a growing interest on the part of private Members in introducing private Members' bills and that the increase in interest is particularly amongst Progressive Conservative Members. This only serves to strengthen the assertion that private Members are becoming more interested in introducing private Members' bills, because throughout the 19th Legislature, Progressive Conservative private Members accounted for about 90% of all private Members. The study has also shown that the NDP submit an unusually high ratio of bills. Aside from the fact that for the period of this study one member made up the entire NDP caucus, it was suggested that a philosophy of government intervention and a desire to set down a record of policy were two other factors that would account for the high ratio of bills to member. Finally, the study found that, during the 19th Legislarure all bills were talked out and that of the bills that reached second reading debate, the majority were bills submitted by government private Members.

What about the validity of the criticisms mentioned earlier? The first complaint was that there is little time for debating private Members' bills. This criticism is probably true in Alberta as well, especially in light of the increasing number of private Members' bills being introduced, and the fact

that they can only be debated on Thursday afternoons for one hour.

The second complaint was that private Members' bills are poorly drafted. The problem of drafting generally arises when those doing the drafting are not familiar with legislative drafting. This is often the case in the federal Parliament, where outside solicitors, party solicitors, and even members draft bills. In Alberta, however, all private Members' bills are drafted by the Parliamentary Counsel, and to put it in his words, all private Members' bills in Alberta are drafted to be "plug in law."(27)

The next complaint was that private Members' bills never come to a vote but are talked out. This is the case in Alberta as well. In the study just completed, we saw that no private Members' bills came to a vote during the 19th Legislature. This criticism is suspect, however, for there are a few arguments against having private Members' bills come to a vote. For instance, if one is to conclude as Hyson did that private Members' bills are introduced as a means of expressing opinion rather than initiating legislation, then a vote on second reading becomes much less important, and indeed, may be detrimental.(28) Marie Cordeau sums this up:

> While most Members would theoretically welcome more votes being taken to guage the opinion of the House on different bills and resolutions, a lot are still quite reticent. They feel that votes would probably bring the whips on, and that would destroy the whole free atmosphere of private Members' hours. . . . Finally, the initiative of the government backbencher during these hours would be curtailed. How would he react if his own party turned his bill down? How would he face his constituents?(29)

Cordeau goes on to report that many members see private Members' hour as one of the most interesting exchanges of ideas.(30)

Much the same idea has been mentioned by Michael Clegg who says that private Members' bills often are used as trial balloons; many of the bills deal with difficult issues, and thus the bill is not meant to become law, but

rather to put forward for debate and public scrutiny a certain method of dealing with an issue. Thus a vote would not be welcomed.(31)

Another reason for not voting on private Members' bills, at least in the case of Progressive Conservative private Members is that private Members' bills are discussed in caucus prior to being introduced in the Legislature. Often times there will not be complete agreement in the caucus on the issues addressed by a bill, and thus to bring the bill to a vote would probably spell the end to an idea or proposal that might have otherwise been discussed and eventually accepted over time.(32)(33)

This leads to the criticism that Cabinet is unreceptive to ideas put forward in the form of private Members' bills. In light of the foregoing this would not seem to be so in all or even most cases. While ideas put forward by opposition private Members' are probably not generally considered by Executive Council, it has been estimated that about ten percent of the proposals contained in private Members' bills put forward by government party members end up being incorporated into government legislation, although often in a radically different form and most likely without public acknowledgement of the source of the idea.(34)

The above study and discussion back up the previously stated conclusion that private Members' bills are introduced as a means of expressing opinion rather than initiating legislation. In addition to the indications mentioned thus far, there are the following points to consider.

For instance, the NDP tended to use private Members' bills as a means of setting out a record of policy. In association with this, private Members' bills may be used to gain media coverage.(35) Because private Members' bills are bills and always have the potential of becoming law, the interest of the media and public is often sparked. Thus Members often use private Members'

bills as a means of gauging public support.(36) Private Members' bills may also be use to get the government to do something. P.A. Bromhead, speaking of the British system makes the observation that private Members' bills are often used for the purpose of "goading the Government to make better use of the powers it already [has]."(37) Yet another use that falls under the heading of expressing opinion is the introduction of a bill for the purpose of demonstrating a concern for constituents and supporters. Kornberg and Mishler see this function as the "principal value" of private Members' bills.(38) Finally, private Members' bills may be used for identifying a problem and proposing a tentative solution for discussion.

Thus, it seems, that while private Members' bills do not in any but a very limited way serve as a method by which a private Member may fulfill a lawmaking role in the legislature, it does seem that private Members' bills do serve the function of expressing opinion, and that is a very important function indeed. Private Members' bills show what private Members are thinking about, and in the case of Alberta with its large Progressive Conservative majority, private Members' bills may often show what the government is thinking about.

END NOTES

1. Allan Kornberg and William Mishler, Influence in Parliament: Canada (Durham, North Carolina: Duke University Press, 1976), p. 21.

2. Kornberg and Mishler, p. 21.

3. Robert Jackson and Michael M. Atkinson, The Canadian Legislative System: Politicians and Policymaking , 2nd revised ed. (Toronto: Macmillan, 1980), p. 5.

4. Kornberg and Mishler, p. 22.

5. Alistair Fraser, G.A. Birch, W.F. Dawson, Beauchesne's Rules and Forms of the House of Commons of Canada with Annotations, Comments and Precedents , 5th ed. (Toronto: Carswell, 1978), p. 217, s. 700.

6. Personal interview with Michael Clegg, Parliamentary Council, Legislative Assembly of Alberta, 27 June, 1983.

7. Beauchesne's , p. 221.

8. In reality it is the Parliamentary Council that does the actual perusal of the bills.

9. Clegg, June 27.

10. Clegg, June 27.

11. Alberta Hansard , May 3, 1983 p. 761.

12. Jackson & Atkinson, p. 169.

13. Jackson & Atkinson, p. 171.

14. Gordon Aiken, The Backbencher (Toronto: McClelland & Stewart, 1974), p. 51.

15. Paul G. Thomas, "Comments," The Legislative Process in Canada, The Need for Reform , W.A.W. Neilson and J.C. MacPherson, eds. (Montreal: Institute for Research on Public Policy, 1978), p. 157.

16. Frank Howard as quoted in Marie Cordeau, "Private Members' Hours," in The Canadian House of Commons Observed , ed. Jean-Pierre Gaboury and James Ross Hurley (Ottawa: The University of Ottawa Press, 1979), p. 61.

17. Jackson and Atkinson, p. 171.

18. R.V. Stewart Hyson, "The Role of the Backbencher -- An Analysis of Private Members' Bills in the Canadian House of Commons," Parliamentary Affairs , 28 (1974-75), p 265.

19. Aiken, p. 51.

20. Hyson, p. 265.

21. Hyson, p. 265.

22. Hyson, p. 266.

23. Hyson, p. 267.

24. Hyson, p. 267.

25. Kornberg & Mishler, p. 152.

26. Lawrence Leduc Jr. and Walter L. White, "The Role of the Opposition in a One - Party Dominant System: The Case of Ontario," Canadian Journal of Political Science , 7 1974, 98.

27. Clegg, June 27.

28. Hyson, p. 272.

29. Cordeau, p. 64.

30. Cordeau, p. 64.

31. Clegg, June 27.

32. Clegg, June 27.

33. For a further discussion of the Alberta government caucus, although not directly relating to the handling of bills, see Dr. Peter McCormick, "Politics After the Landslide," Parliamentary Government, no. 4, (1983), pp. 8-10.

34. Clegg, June 27, 1983. Mr. Clegg cites the case of Mr. Zaozirny's Tenancies of Mobile Home Sites Act which was later passed by the government as the Mobile Home Sites Tenancies Act.

35. Cordeau, p. 63.

36. Clegg, June 27.

37. P.A. Bromhead, Private Members' Bills in the British Parliament (Westport, Connecticut: Greenwood Press, 1975), p. 58.

38. Kornberg & Mishler, p. 147.

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